
PAYOR AGREEMENT

CITY OF AUSTIN
ACTING THROUGH AUSTIN PUBLIC HEALTH

Dated as of _____, 2019

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This Payor Agreement (this “Agreement”), dated as of _____, 2019 is entered into by and between the City of Austin acting through Austin Public Health, a city public health agency (the “City”), and Payor Alliance for AT Home LLC (“PAATH LLC”), a wholly owned subsidiary of Social Finance, Inc. The City and PAATH LLC are referred to herein as the “Parties” and each as a “Party”. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in Appendix A.

WHEREAS, the Parties wish to enter into a contract for the Austin-Travis County Home Initiative (the “Project”), on the terms and subject to the provisions of this Agreement;

WHEREAS, the City incurs significant quality of life and public safety costs resulting from persistent substance use, chronic health challenges and the revolving door of incarceration of a chronically homeless population within the City and Travis County, Texas (the “County”);

WHEREAS, there is currently an unmet need of approximately [1000] permanent supportive housing units in the City/County, and the Project anticipates providing wrap-around services (the “Intervention”) in conjunction with 250 permanent supportive housing units for individuals who are the highest utilizers of public services;

WHEREAS, PAATH LLC has entered into that certain Pay for Success Agreement (the “PFS Agreement”) between PAATH LLC and Austin Travis County Home Initiative LLC (“AT Home LLC”), and attached hereto as Appendix B;

WHEREAS, PAATH LLC is a limited liability company which partners with participating health care entities and municipalities to secure public/private funds towards the goal(s) of the Project, and Social Finance, Inc. is a 501(c)(3) nonprofit organization, which partners with governments, nonprofits, foundations, impact investors, and financial institutions to create innovative financing solutions to improve social outcomes;

WHEREAS, the City and PAATH LLC are entering into this Agreement in order to provide up to \$6,000,000 in funds to be used by PAATH LLC for Outcome Payments;

WHEREAS, the City is authorized to enter into this Agreement, and to make Outcome Payments, when due, in accordance with this Agreement and the PFS Agreement;

WHEREAS, PAATH LLC will enter into similar agreements (together with this Agreement, the “Payor Contracts”) with other payors (together with the City, collectively, the “Payors”) pursuant to which each of the Payors will provide funds at the times and in the aggregate amounts set forth in the related Payor Contracts, to be used by PAATH LLC as Outcome Payments, all in accordance with the PFS Agreement;

WHEREAS, operating costs for the Project will be funded by the proceeds of loans to and/or investments in AT Home LLC (the “Financing”), such Financing to be repaid from Outcome Payments;

WHEREAS, AT Home LLC will enter into an agreement (the “Intervention Agreement”) with Ending Community Homelessness Coalition (“ECHO”), pursuant to which ECHO will

facilitate implementation of the Intervention, to be delivered to eligible Program Participants, all as more fully described in the PFS Agreement, Schedule 1 (Operating Responsibilities);

WHEREAS, AT Home LLC will enter into an agreement (the “Evaluator Agreement”) with Abt Associates Inc. (the “Evaluator”), an independent third party, to measure five different Outcomes, including an Inpatient Days Outcome, an Emergency Department Visits Outcome, a Housing Stability Outcome, a Jail Bookings Outcome, and a Jail Days Outcome, all as more fully described in the PFS Agreement, Schedule 2 (Project Evaluation), which will determine the Outcome Payments;

WHEREAS, AT Home LLC will calculate the Outcome Payments, if any, and the amount of such Outcome Payments to be paid by the City, in accordance with the PFS Agreement, Schedule 3 (Calculation of Outcome Payments), and provide an invoice for such amount to PAATH LLC to be delivered to the City; and

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the Parties agree as follows:

ARTICLE I. DEFINITIONS/CONSTRUCTION

Section 1.1 Defined Terms.

In this Agreement, capitalized terms have the meaning assigned to them in this Agreement, in Appendix A to this Agreement and in Appendix A – Index of Defined Terms to the PFS Agreement, a copy of which is attached hereto and incorporated by this reference.

Section 1.2 Appendices and Schedules.

The following additional Appendices and Schedules are attached hereto: During the term of the Agreement, conflicts between the various documents shall be resolved in the following order of precedence, such documents constituting the entire Agreement between the parties:

Appendix B: PFS Agreement, including the following Schedules thereto, hereby incorporated into this Agreement in its entirety:

Schedule 1: Operating Responsibilities

Schedule 2: Project Evaluation

Schedule 3: Calculation of Outcome Payments

Schedule 4: Governance and Reporting

Schedule 5: Publicity

ARTICLE II. TERM OF AGREEMENT; SERVICES

Section 2.1 Effective Date.

This Agreement will become effective as of the Service Commencement Date (as defined below), and will remain in effect for a term of five (5) years (the “Term”), unless earlier terminated pursuant to Section 7.1.

Section 2.2 Project Launch Date.

ECHO will oversee the implementation of the Intervention, as described more fully in the PFS Agreement, Schedule 1 (Operating Responsibilities), following the satisfaction of the Financing Condition on a date to be agreed to by the Management Committee (the “Service Commencement Date”) in accordance with the PFS Agreement.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

Section 3.1 PAATH LLC’s Representations and Warranties.

(a) Organization and Good Standing. PAATH LLC is a limited liability company validly existing and in good standing under the laws of the State of Delaware, is qualified to conduct business in the Commonwealth of Massachusetts and the State of Texas, and has full corporate power and authority to conduct its business as presently conducted and to enter into and perform under this Agreement and the PFS Agreement.

(b) Authority for Agreement. The execution, delivery and performance by PAATH LLC of this Agreement and the performance by PAATH LLC under this Agreement have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by PAATH LLC and, assuming the due authorization, execution and delivery by the City, and subject to the effect of applicable Laws (e.g., bankruptcy, insolvency, reorganization, moratorium and similar Laws relating to the rights of creditors generally), constitutes a legal, valid and binding obligation of PAATH LLC, enforceable against PAATH LLC in accordance with its terms. The execution and performance of this Agreement by PAATH LLC will not violate any provision of Law and will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under or require a consent or waiver under, PAATH LLC’s organizational documents or any decree, judgment, or order applicable to PAATH LLC.

(c) No Litigation. No litigation, arbitration or administrative proceeding is presently in progress or, to PAATH LLC’s knowledge, pending or threatened in writing against PAATH LLC or any of its assets which might reasonably be expected to materially adversely affect the ability of PAATH LLC to perform its obligations under this Agreement.

Section 3.2 City’s Representations and Warranties.

(a) Authority for Agreement. The execution, delivery and performance by the City of this Agreement, have been duly authorized by all necessary governmental action. This Agreement

has been duly executed and delivered by the City and, assuming the due authorization, execution and delivery by PAATH LLC, and subject to the effect of applicable Laws (e.g., bankruptcy, insolvency, reorganization, moratorium and similar Laws relating to the rights of creditors generally), constitutes a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms. The execution and performance of this Agreement by the City will not violate any provision of Law or any decree, judgment or order applicable to the City. There is no condition, subsequent or precedent, required to be fulfilled for the authorization provided by the City to be in full force and effect.

(b) No Litigation. No claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the City's knowledge, pending or threatened against such Party which will or might reasonably be expected to materially adversely affect the ability of the City to perform under this Agreement.

(c) Governmental Consents. No further consent, approval, order, or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority is required in connection with the execution, delivery and performance of this Agreement by the City or the payment of Outcome Payments hereunder, except for the City's annual appropriations subject to approval by City Council.

ARTICLE IV. OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES

Section 4.1 PAATH LLC's Obligations and Responsibilities.

Without limiting the generality or effect of any other provision of this Agreement, PAATH LLC will:

- (a) use its reasonable efforts to perform its responsibilities and to take such actions in each case as are required to be taken by it in this Agreement;
- (b) in rendering its services hereunder, comply with all Laws applicable to it and its subsidiaries;
- (c) enter into the other Payor Contracts and the PFS Agreement, and without the prior written consent of the City, which consent may not be unreasonably withheld, conditioned or delayed, subsequently not (i) amend such PFS Agreement in any manner that will materially affect the City's obligations hereunder, or (ii) terminate the PFS Agreement;
- (d) obtain the prior written consent of the City, which consent may not be unreasonably withheld, conditioned or delayed, before giving consent to AT Home LLC to (i) make any amendments to the Intervention Agreement or the Evaluator Agreement, which would have a material effect on Outcomes, Outcome Payments or the City's obligations hereunder; (ii) terminate either the Intervention Agreement or the Evaluator Agreement; or (iii) effect a substitution of ECHO or the Evaluator under the applicable agreement;
- (e) upon receiving notice from AT Home LLC of a Material Breach of the Intervention Agreement or the Evaluator Agreement, promptly provide such notice to the City, and

provide ongoing information about AT Home LLC’s efforts to cause ECHO or the Evaluator, as applicable, to remedy such Material Breach, or, if necessary, to replace ECHO or the Evaluator, as applicable; and

(f) promptly notify the City of any Material Breach of the other Payor Contracts, or the PFS Agreement, and use reasonable efforts to (i) cause the applicable breaching party to remedy such Material Breach, or (ii) replace such breaching party in accordance with the applicable agreement.

Section 4.2 City’s Obligations and Responsibilities.

Without limiting the generality or effect of any other provision of this Agreement, City will comply with the following:

(a) The City’s payment obligation extends only to funds appropriated annually by City Council and encumbered for the purpose of this Agreement. The City, acting through Austin Public Health, will annually request from City Council a request for appropriation, beginning in fiscal year 2019 and ending in fiscal year 2023, in the amount, together with amounts previously appropriated, that is necessary to meet the Minimum Cumulative Deposit set forth in Table 1 below, less any Outcome Payments already paid by the City. The aggregate amount to be requested by the City shall not exceed \$6,000,000. Funds so appropriated and encumbered will remain in a City-fund reserved for the Project until completion of the Project at the end of the Term of this Agreement, or early termination of the Project. The City shall apply such amounts to make Outcome Payments, as set forth in Section 5.3 hereof.

(b) Keep PAATH LLC reasonably informed of the status of any relevant budget, legislative or other City actions related to the availability of funds for this Agreement or Pay for Success projects generally.

(c) By each Deposit Date (“Deposit Date”) listed in Table 1 below, hold in trust the amounts necessary to meet the applicable FY Minimum Cumulative Deposit (“Minimum Cumulative Deposit) at such Deposit Date from amounts received in accordance with Section 4.2(a) above, which amounts may be altered by unanimous approval of the Payor Steering Committee should Project funding needs decrease:

Table 1

Fiscal Year	Deposit Date	Minimum Deposit	FY Minimum Cumulative Deposit
2019	Service Commencement Date	\$1,200,000	\$1,200,000
2020		\$1,200,000	\$2,400,000

2021		\$1,200,000	\$3,600,000
2022		\$1,200,000	\$4,800,000
2023		\$1,200,000	\$6,000,000

(d) The City acknowledges that PAATH LLC has no obligation to furnish to it any information regarding the identity of any Funding Partner or any term of the Financing without the applicable Funding Partner’s prior written consent

(e) The execution or continuation of this Agreement is dependent upon the availability of funding upon authorization of the City Council. The City’s deposit and payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall terminate this Agreement in accordance with Article VII below. The City shall provide PAATH LLC written notice of the failure of the City to make an adequate appropriation for any fiscal year to make the required deposits under Section 4.2(a) and Section 4.2(c) of this Agreement or to pay the amounts due under this Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to meet its deposit or payment obligations under this Agreement. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City, provided that all payments in accordance with Section 7.2 below have been made.

(f) An extension of the term of this Agreement requires authorization by City Council

Section 4.3 Confidential Information.

(a) Confidential Information Generally. Each Party acknowledges that, during the term of this Agreement, it may disclose (the “Disclosing Party”) to the other (the “Receiving Party”) certain confidential information and data (the “Confidential Information”). Each Party agrees to maintain all Confidential Information provided to it by another Party as confidential and to not disclose such information to any Persons other than to its representatives or as otherwise required by Law.

(b) Notice. PAATH LLC shall endeavor to clearly mark each page of all documents which such Party wishes to designate as Confidential Information “Confidential Information” and may also include a reference to this Agreement; provided, however, that PAATH LLC’s failure to mark any document shall not foreclose such Party from asserting that a document should be designated as Confidential Information.

(c) Certain Required Disclosures. For purposes of this Section 4.3, “Confidential Information” does not include, and there will be no obligation hereunder with respect to, information that (i) was available or became available to the public other than as a result of a disclosure by the Receiving Party; or (ii) was available, or became available, to the Receiving

Party on a non-confidential basis prior to its disclosure to the Receiving Party by the Disclosing Party or its representative, but only if such information was not made available through a breach of an obligation of confidentiality owed to the Disclosing Party; (iii) is subject to disclosure in accordance with state or federal law, including the U.S. Freedom of Information Act, or (iv) is legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand or similar legal process) or the disclosure of which is required by a regulatory body or court, provided, that Receiving Party shall: (A) provide the Disclosing Party with prompt notice of any such request(s) so that it may seek an appropriate protective order or other appropriate remedy, and (B) provide reasonable assistance to the Disclosing Party in obtaining any such protective order. If such protective order or other remedy is not obtained or the Disclosing Party otherwise consents to disclosure, then the Receiving Party may furnish that portion (and only that portion) of the Confidential Information which, in the opinion of counsel to the Receiving Party, the Receiving Party is legally compelled to disclose.

Section 4.4 Payor Steering Committee.

The City shall appoint a representative to the Payor Steering Committee as set forth in the PFS Agreement, Schedule 4 (Governance and Reporting). The rights and responsibilities of the Payor Steering Committee members are set forth in the PFS Agreement, Schedule 4 (Governance and Reporting).

Section 4.5 Publicity.

News releases or any other similar public announcements regarding the Project or this Agreement may not be released or made by any Party prior to following the procedures outlined in the PFS Agreement, Schedule 5 (Publicity); provided, however, that any Party may make any public announcement that its counsel advises is required by Law or legal process, in which case, to the extent practicable, it will consult with the other Party with respect to the timing and content thereof.

Section 4.6 Books and Records; Audit Rights.

PAATH LLC will establish and maintain books, records and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds in connection with the Project. PAATH LLC will retain all records, financial records, supporting documents, statistical records and any other documents (including electronic storage media) pertinent to this Agreement for a period of five years after termination of the Agreement, or until any litigation based on the terms of this Agreement or the PFS Agreement has concluded, or, if an audit has been initiated and audit findings have not been resolved at the end of five years, the records will be retained until resolution of the audit findings. PAATH LLC will assure that these records will be subject at all reasonable times to inspection, review, or audit by federal, state, or other personnel duly authorized by the City. The City or any of its duly authorized representatives shall, until five years after final payment, have the right to examine any directly pertinent books, documents, papers and records of PAATH LLC involving transactions related to the Agreement.

Section 4.7 Funding Shortfall.

Upon being notified of a Funding Shortfall by AT Home LLC in accordance with the PFS Agreement, PAATH LLC will notify the City of such shortfall and any actions being taken to remedy any such Funding Shortfall.

ARTICLE V. OUTCOMES AND OUTCOME PAYMENTS

Section 5.1 Calculation of Outcomes and Outcome Payments.

Outcome Payments are contingent upon the Evaluator's determinations as to whether the Outcomes have been met in accordance with the PFS Agreement, Schedule 2 (Project Evaluation). Upon such a determination that one or more of the Outcomes have been met, AT Home LLC shall calculate the applicable Outcome Payments in accordance with the PFS Agreement, Schedule 3 (Calculation of Outcome Payments).

Section 5.2 Maximum Payments.

The maximum amount payable as appropriated by the City for Outcome Payments is \$6,000,000.

Section 5.3 Outcome Payments.

The City is only required to make Outcome Payment for Outcomes achieved. The City will make the Outcome Payments to PAATH LLC, which payments will be calculated and become due in accordance with the PFS Agreement, Schedule 3 (Calculation of Outcome Payments). If an Outcome Payment is payable by the City in accordance with said Schedule 3, the City will make such Outcome Payment in full within 30 days of receipt of an invoice from PAATH LLC, without deduction or setoff, by electronic wire transfer of immediately available funds to a bank account designated by PAATH LLC reasonably in advance of the payment due date. The City will be obligated to make any such Outcome Payments regardless of whether any of the other Payors have met their respective payment obligations.

Section 5.4 No Third Party Rights.

The Parties agree that nothing in this Agreement, including this Article V shall be deemed to create or give to any third party any claim or right of action against any Party, provided that the City acknowledges that PAATH LLC will collaterally assign the right to payment set forth in this Agreement to AT Home LLC, which in turn will assign the right to payment to the Funding Partners (the "Assignees"), as collateral for the obligations of AT Home LLC to the Funding Partners, and the City hereby consents to such collateral assignments. The City agrees that no amendment to the PFS Agreement that affects the amount or timing of Outcome Payments thereunder shall be valid without the prior written consent of each Assignee. Each Assignee shall be a third party beneficiary of the Outcome Payment provisions of this Agreement and shall be entitled to enforce the payment provisions hereof.

ARTICLE VI. MODIFICATION

Section 6.1 Generally.

This Agreement or any part of it may only be modified, revised, supplemented, abrogated, extended, waived, or amended in writing agreed to and signed by all Parties. In the event of any change in Federal or state Law or regulation which affects a Party's responsibilities, this Agreement shall be automatically amended to reflect such changes. Thereafter, the Parties mutually agree to enter into good faith negotiations to enter into a written amendment to reflect such changes.

ARTICLE VII. TERMINATION OF AGREEMENT

Section 7.1 Termination Rights.

This Agreement may be terminated as follows and may not be terminated for any other reason or under any other theory whatsoever:

(a) City Appropriation or Deposit Failure: By City and/or PAATH LLC, if the funds appropriated by the City for an applicable fiscal year are less than the amount for which an appropriation was required to be requested of City Council as set forth in Section 4.2(a) hereof, or if the funds secured by or appropriated by the City are less than the amounts set forth in Section 4.2(c) hereof, provided that the City shall have 60 days to cure such appropriation or deposit failure.

(b) City Payment Failure: By PAATH LLC, if the City fails to make an Outcome Payment when due in accordance with Section 5.3 with respect to an Outcome Payment due from the City.

(c) City Breach: By PAATH LLC, if PAATH LLC shall provide notice of Material Breach to the City with respect to any of its other obligations hereunder and the City shall then have 60 days to Cure such Material Breach, provided that PAATH LLC shall extend such 60 day period if the City is working in good faith to Cure such Material Breach. If the City fails to Cure such Material Breach within such 60 day period, or such extended period, then PAATH LLC may terminate this Agreement.

(d) Mutual Consent: Automatically upon the written mutual consent of the Parties, which consent may not be unreasonably withheld, conditioned, or delayed, in accordance with the terms of such written mutual consent to termination.

(e) PAATH LLC Breach: By the City, if the City shall provide notice of Material Breach to PAATH LLC with respect to its obligations hereunder, and PAATH LLC shall then have 60 days to Cure such Material Breach, provided that the City may extend such 60 day period if PAATH LLC is working in good faith to Cure such Material Breach. If PAATH LLC fails to Cure such Material Breach within such 60 day period, or such extended period, then the City shall request the Management Committee to replace PAATH LLC. If the Management Committee fails to replace PAATH LLC within 30 days, the City may terminate this Agreement.

(f) Non-City Payor Breach: By PAATH LLC, if one or more of the non-City Payor Contracts is terminated in accordance with its terms due to a default by any other Payor under any other such Payor Contract (a "Non-City Payor Termination").

(g) Early termination of PFS Agreement: This Agreement shall terminate upon an early termination of the PFS Agreement in accordance with Section 8.1 thereof.

Section 7.2 Effect of Termination.

The remedies provided in this Section 7.2 are the exclusive and sole remedy of any Party in connection with a termination of this Agreement, provided that all such remedies are subject to the Wind-Up procedures set forth in Section 7.2(f) below, including the applicable provisions of Section 8.2 of the PFS Agreement as referenced below.

(a) Mutual Consent. Upon a termination of this Agreement pursuant to Section 7.1(d) (Mutual Consent), this Agreement will terminate at the time and under such conditions as are agreed to by the Parties, provided that the City will remain obligated to make any Outcome Payments due, including Early Outcome Payments as applicable, in accordance with Section 7.2(f) below.

(b) City Appropriation or Deposit Failure; City Payment Failure; City Breach. Upon a termination by the City or PAATH LLC, as applicable, pursuant to Section 7.1(a) (City Appropriation or Deposit Failure), Section 7.1(b) (City Payment Failure) or Section 7.1(c) (City Breach), (each a “City Termination”), this Agreement will terminate, effective upon the date set forth in such notice of termination. Upon issuance of the notice of termination, PAATH LLC, no additional Program Participants will be enrolled in the Intervention, provided that any existing Program Participants will continue to receive Intervention services until such Program Participants shall be transferred to other comparable services, such determination to be made by the Management Committee. The City will remain obligated to make any Outcome Payments, including Early Outcome Payments, together with any Remaining Project Costs (as defined below) and the full Project Termination Budget (as defined in the PFS Agreement), all in accordance with Section 7.2(f) below.

(c) PAATH LLC Material Breach. Upon a termination by the City pursuant to Section 7.1(e) (“PAATH LLC Breach”), no additional Program Participants will be enrolled in the Intervention, provided that any existing Program Participants will continue to receive Intervention services until such Program Participants shall be transferred to other comparable services, such determination to be made by the Management Committee. The City, along with all other Payors contracting with Payor LLC, will remain obligated to make any Outcome Payments, including Early Outcome Payments, in accordance with Section 7.2(f) below.

(d) Non-City Payor Termination. Upon an early termination of one or more of the non-City Payor Contracts in accordance with the terms thereof, this Agreement may be terminated by PAATH LLC. The City, along with all other Payors contracting with PAATH LLC, will remain obligated to make any Outcome Payments, including Early Outcome Payments, together with any Remaining Project Costs, in accordance with Section 7.2(f) below.

(e) Early Termination of PFS Agreement. Upon an early termination of the PFS Agreement in accordance with Article VIII thereof, this Agreement will terminate in accordance with the provisions set forth in Section 8.2 of the PFS Agreement, provided that the City and other Payors shall consent to the early termination of the PFS Agreement as set forth therein, which consent may not be unreasonably withheld, conditioned, or delayed. The City, along with all other

Payors contracting with PAATH LLC, will remain obligated to make any Outcome Payments, including Early Outcome Payments, in accordance with Section 7.2(f) below.

(f) Wind-Up.

(i) Following receipt of a notice of termination in accordance with this Article VII, the City will pay to PAATH LLC the amounts set forth below, in all cases, limited to the funds appropriated and/or deposited by the City or held in trust for the Project in accordance with Section 4.2(a) and Section 4.2(c) hereof, as applicable:

(A) An Outcome Payment which will consist of the following:

1. Outcome Payments owed by the City but not yet made;
2. For Program Participants for whom services have been delivered but Outcomes have not yet been calculated by the effective date of termination of this Agreement, the City shall pay a proportionate share, along with the other Payors, of an Early Outcome Payment for Outcomes achieved as of the date of termination, calculated as set forth in the PFS Agreement, Schedule 3 (Calculation of Outcome Payments);

(B) Solely in the event of a City Termination or a Non-City Payor Termination, for Program Participants for whom services have been delivered but Outcome Payments and Early Outcome Payments, in accordance with Section 7.2 (f)(i)(A) above, do not cover the full amount of Funding Partner capital deposited with AT Home LLC that has been expended for purposes of the Project and is not otherwise available to be retrieved and returned to the Funding Partners (the “Remaining Project Costs”), up to the date of termination, the City shall pay in addition to the amounts set forth in Section 7.2 (f)(i)(A) an amount equal to its pro-rata share of such Remaining Project Costs; and

(C) Solely in the event of a City Termination, the City will pay in addition to the amounts set forth in Section 7.2 (f)(i)(A) and (B) above, the full amounts set forth in the Project Termination Budget, as determined in accordance with Section 8.2(e) of the PFS Agreement, from the funds appropriated and/or deposited by the City or held in trust for the Project in accordance with Section 4.2(a) and Section 4.2(c) hereof, as applicable, and nothing more.

ARTICLE VIII. MISCELLANEOUS

Section 8.1 Notices.

All notices and other communications among the Parties will be in writing and will be deemed to have been duly given (a) when delivered in person, (b) five days after posting in the United States mail having been sent registered or certified mail return receipt requested, (c) when

delivered by FedEx or other nationally recognized overnight delivery service, or (d) when delivered by fax or email, addressed as follows:

In the case of the City to:

City of Austin

Attention: _____

In the case of PAATH LLC to:

Payor Alliance for AT Home LLC
c/o Social Finance, Inc.
10 Milk Street, Suite 1010
Boston, MA 02108
Attention: Navjeet Bal
Email: nbal@socialfinance.org

or to such other address or addresses as the Parties, may from time to time designate in writing.

Section 8.2 Entire Agreement.

This Agreement (including the Schedules, Exhibits and Appendices hereto, which are incorporated by reference) constitutes the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein will be binding or valid, and this Agreement may not be changed, modified, or altered in any manner except by an instrument in writing executed by both Parties hereto. Neither this Agreement nor any interest herein may be transferred by the Parties and such transfer will be null and void and will be cause to annul this Agreement. To the extent there are any conflicts or inconsistencies between this Agreement and any Schedule or Appendix, the provisions of this Agreement shall govern and control.

Section 8.3 Captions.

The captions contained in this Agreement are intended for convenience and reference purposes only and do not modify or restrict any provision herein.

Section 8.4 Remedies Cumulative.

Except as otherwise expressly provided by this Agreement, all remedies available to PAATH LLC or the City for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not exclude the exercise of any other remedy. Notwithstanding any other provision of this Agreement, no Party will be entitled to recover compensation or make a claim under this Agreement in respect of any loss that it has

incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise by the other Party.

Section 8.5 Non-Waiver.

The failure of either Party to exercise any right or to require strict performance of any provision will not waive or diminish such Party's right thereafter to exercise such right or to require strict performance of any provision nor will a waiver of any breach or default of the Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. No waiver of any of the provisions of this Agreement will be binding unless executed in writing by the Party making the waiver.

Section 8.6 Severability.

In the event that any one or more of the provisions of this Agreement shall for any reason be declared unenforceable under the Laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Agreement, which will then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

Section 8.7 Survival of Covenants, Representations and Warranties.

Other than Section 4.3 (Confidential Information), Section 4.6 (Books and Records, Audit Rights), Article VI (Modification), Section 7.2 (Effect of Termination), no covenant, representation or warranty of the Parties herein will survive the termination or expiration of this Agreement.

Section 8.8 Governing Law.

This Agreement will be construed and enforced in accordance with the laws of the State of Texas, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of Texas.

Section 8.9 Costs.

Each Party will bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the performance by it hereunder.

Section 8.10 Counterparts.

This Agreement may be executed in counterparts, each of which when executed and delivered will constitute an original but all counterparts together will constitute one and the same instrument.

Section 8.11 Assignment.

Except as set forth in Section 5.4 hereof, no Party may assign its respective rights or obligations under this Agreement without the prior written consent of the other Parties, which shall

not be unreasonably withheld. This Agreement is binding upon and inures to the benefit of the Parties and their successors and assigns.

Section 8.12 Independent Contractor.

Nothing contained in this Agreement, and no action by any Party, shall be deemed to: (i) create between them an employer-employee or principal-agent relationship or partnership, joint venture, association, or syndicate; or (ii) confer on any party any right, power or authority to enter into any agreement or commitment, whether express or implied, or to incur any obligation or liability on behalf of the other party. Neither Party shall hold itself out as the agent of the other Party, nor imply, nor fail to correct a misunderstanding, that there is an agency relationship between it and the other Party.

Section 8.13 Further Assurances.

The Parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with this Agreement or the PFS Agreement and that do not involve the vesting of rights or the assumption of obligations other than those provided for in this Agreement, in order to give full effect to the Agreement and carry out the intent thereof.

Section 8.14 Time of the Essence.

Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, that, this provision shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

Section 8.15 Construction.

Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) the terms “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Agreement, (d) when a reference is made in this Agreement to an Article, Section, Schedule, Exhibit or Appendix, such reference is to an Article or Section of, or a Schedule, Exhibit or Appendix to, this Agreement, (e) the word “including,” “include” or “includes” means “including, without limitation,” (f) the words “Person” or “Persons” refers to a natural person and/or an entity of any type, and (g) the word “or” will be disjunctive but not exclusive. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase will not mean simply “if.” References to agreements and other documents will be deemed to include all subsequent amendments and other modifications thereto. References to statutes will include all regulations promulgated thereunder, and references to statutes or regulations will be construed to include all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent and no rule of strict construction will be applied against any Party. Whenever this Agreement refers to a number of days, such number will refer to calendar days unless Business Days are specified. All accounting

terms used herein and not expressly defined herein will have the meanings given to them under United States generally accepted accounting principles.

Section 8.16 Electronic Signatures and Electronic Records.

Each Party consents to the use of electronic signatures by each other Party. This Agreement and any other documents requiring a signature under this Agreement, may be signed electronically by the Parties. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in formation.

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By execution of this Agreement, the Parties agree to the terms and conditions of this Agreement.

PAYOR ALLIANCE FOR AT HOME LLC:

By: _____
Name: _____
Title: _____

CITY OF AUSTIN

By: _____
Name: _____
Title: _____

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APPENDIX A – INDEX OF DEFINED TERMS XXX

- “Agreement” has the meaning given to such term in the preamble of the Agreement.
- “AT Home LLC” has the meaning given to such term in the preamble of the Agreement.
- “Business Days” has the meaning set forth in Appendix A to the PFS Agreement.
- “City” has the meaning given to such term in the recitals of the Agreement.
- “City Termination” has the meaning set forth in Section 7.2(b) of the Agreement.
- “Confidential Information” has the meaning given to such term in Section 4.3 of the Agreement.
- “County” has the meaning given to such term in the recitals of the Agreement.
- “Cure” means, with respect to a particular set of facts and circumstances constituting a Material Breach, that Party has taken actions such that there is no longer a Material Breach or taken all steps reasonably necessary that there is no continuing Material Breach, including by implementing appropriate procedures or controls.
- “Deposit Date” has the meaning set forth in Section 4.2 of the Agreement.
- “Disclosing Party” has the meaning set forth in Section 4.3 of the Agreement.
- “Early Outcome Payment(s)” has the meaning set forth in the PFS Agreement, Schedule 3 (Calculation of Outcome Payments).
- “ECHO” has the meaning set forth in the recitals to this Agreement.
- “Emergency Department Visits Outcome” has the meaning set forth in the PFS Agreement, Schedule 2 (Project Evaluation).
- “Evaluator” has the meaning given to such term in the recitals of the Agreement.
- “Evaluator Agreement” has the meaning given to such term in the recitals of the Agreement.
- “Financing” has the meaning given to such term in the recitals of the Agreement.
- “Financing Condition” has the meaning set forth in Appendix A of the PFS Agreement.
- “Funding Partners” means the individuals and entities that have provided or are possible sources of funding legally obtained by the Funding Partner to AT Home LLC for the Project, and which, if such funding is provided, will be entitled to receive their respective portions of the Outcome Payments pursuant to their agreements with and rights with respect to AT Home LLC.

“Funding Shortfall” has the meaning set forth in Section 4.7 of the PFS Agreement.

“Governmental Authority” means any (i) federal, state, local or municipal governmental authority, quasi-governmental authority of any nature or any political subdivision thereof (including any taxing authority, agency, branch, board, commission, bureau, official, or entity and any court, arbitral body or other tribunal); or (ii) body entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority.

“Housing Stability Outcome” has the meaning set forth in the PFS Agreement, Schedule 2 (Project Evaluation).

“Inpatient Days Outcome” has the meaning set forth in the PFS Agreement, Schedule 2 (Project Evaluation).

“Intervention” has the meaning given to such term in the recitals to the Agreement.

“Intervention Agreement” means the agreement dated as of the date set forth therein between AT Home LLC and ECHO, as it may be amended from time to time.

“Jail Bookings Outcome” has the meaning set forth in the PFS Agreement, Schedule 2 (Project Evaluation).

“Jail Days Outcome” has the meaning set forth in the PFS Agreement, Schedule 2 (Project Evaluation).

“Law(s)” means any written law, statute, constitutional provision, treaty, code, ordinance, rule or regulation or other similar requirement of any Governmental Authority and any directive, policy or binding guideline of the City or a federal Governmental Authority.

“Management Committee” is described in the PFS Agreement, Schedule 4 (Governance and Reporting).

“Material Breach” means a material breach of this Agreement, the PFS Agreement, the Intervention Agreement or the Evaluator Agreement by a party thereto that would reasonably be expected to materially adversely impact any of the Outcomes or the amount or timing of any of the Outcome Payments.

“Minimum Cumulative Deposit” has the meaning set forth in Section 4.2 of the Agreement.

“Non-City Payor Termination” has the meaning set forth in Section 7.1(f) of the Agreement

“Outcomes” has the meaning set forth in the PFS Agreement, Schedule 2 (Project Evaluation).

“Outcome Payment(s)” has the meaning set forth in the PFS Agreement, Schedule 3 (Calculation of Outcome Payments).

“Program Participant(s)” has the meaning set forth in the PFS Agreement, Schedule 1 (Operating Responsibilities).

“Parties” or “Party” have the meaning given to such terms in the preamble of the Agreement.

“PAATH LLC” has the meaning given to such term in the preamble of the Agreement.

“PAATH LLC Breach” has the meaning set forth in Section 7.2(c) of the Agreement.

“Payor Contracts” has the meaning given to such term in the recitals to the Agreement.

“Payors” has the meaning given to such term in the recitals to the Agreement.

“Payor Steering Committee” is described in the PFS Agreement, Schedule 4 (Governance and Reporting).

“Person” or “Persons” have meaning given to such terms in the Section 8.15 of the Agreement.

“PFS Agreement” has the meaning given to such term in the recitals to the Agreement.

“Project” has the meaning given to such term in the recitals of the Agreement.

“Project Termination Budget” has the meaning set forth in the PFS Agreement.

“Receiving Party” has the meaning set forth in Section 4.3 of the Agreement

“Remaining Project Costs” has the meaning set forth in Section 7.2(f) of the Agreement

“Service Commencement Date” has the meaning set forth in Section 2.2 of the Agreement.

“Term” has the meaning given to such term in Section 2.1 of the Agreement.

APPENDIX B – PFS AGREEMENT

[Attached]

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